

IN THE SENATE

SENATE BILL NO. 1376

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO DAIRY PRODUCTS; AMENDING TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 6, TITLE 37, IDAHO CODE, TO PROVIDE FOR THE DAIRY ENVIRONMENTAL CONTROL ACT, TO PROVIDE A SHORT TITLE, TO DECLARE POLICY AND TO PROVIDE FOR LEGISLATIVE INTENT AND RECOGNITION OF SPECIFIED FACTORS, TO PROVIDE THAT SUCCESSFUL IMPLEMENTATION OF SPECIFIED PROVISIONS OF LAW IS DEPENDENT ON CERTAIN FACTORS, TO PROVIDE THAT IF CERTAIN CONDITIONS ARE MET THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE SHALL AS APPROPRIATE ESTABLISH A SPECIFIED AGREEMENT, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE SHALL BE SOLELY RESPONSIBLE FOR PROTECTING CERTAIN GROUND WATER AND SURFACE WATER, TO PROVIDE FOR RULEMAKING, TO PROVIDE THAT SPECIFIED LAW SHALL NOT AFFECT CERTAIN AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE TO EXERCISE CERTAIN DELEGATED AUTHORITY, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO DELEGATE CERTAIN AUTHORITY, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY WILL CONSULT WITH THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE BEFORE CERTIFYING DISCHARGES FROM DAIRY FARMS, TO DEFINE TERMS, TO PROVIDE FOR THE DESIGN AND CONSTRUCTION OF NEW AND MODIFIED WASTE SYSTEMS, TO PROVIDE FOR NUTRIENT MANAGEMENT PLANS, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE OR HIS DESIGNEE TO ENTER AND INSPECT DAIRY FARMS, TO AUTHORIZE ACCESS TO AND COPYING OF FACILITY RECORDS, TO PROVIDE FOR COMPLIANCE WITH CERTAIN BIOSECURITY PROTOCOL, TO PROVIDE FOR CONSTITUTIONAL CONFORMANCE AND TO PROHIBIT CERTAIN WARRANTLESS SEARCHES, TO PROHIBIT UNAUTHORIZED DISCHARGES, TO PROVIDE THAT CERTAIN NONCOMPLIANCE SHALL BE ADDRESSED THROUGH CORRECTIVE ACTIONS AND COMPLIANCE SCHEDULES, TO PROVIDE FOR FINES FOR CERTAIN VIOLATIONS AND TO PROVIDE THAT CIVIL PENALTIES SHALL BE REMITTED TO THE COUNTY WHERE THE VIOLATION OCCURRED, TO PROVIDE THAT DAIRY FARMS OPERATING IN COMPLIANCE WITH SPECIFIED LAW SHALL NOT BE SUBJECT TO CERTAIN STATE ENFORCEMENT ACTIONS EXCEPT UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT UNDER CERTAIN CONDITIONS PENDING ADMINISTRATIVE OR CIVIL ENFORCEMENT ACTIONS SHALL BE DEEMED VOID AND TO PROVIDE THAT CERTAIN ORDERS SHALL REMAIN IN EFFECT; REPEALING CHAPTER 7, TITLE 37, IDAHO CODE, RELATING TO PASTEURIZATION; REPEALING CHAPTER 8, TITLE 37, IDAHO CODE, RELATING TO GRADES OF QUALITY FOR MILK AND MILK PRODUCTS; AND REPEALING CHAPTER 10, TITLE 37, IDAHO CODE, RELATING TO DISCRIMINATION AND UNFAIR COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 6, Title 37, Idaho Code, and to read as follows:

CHAPTER 6
DAIRY ENVIRONMENTAL CONTROL ACT

37-601. SHORT TITLE. This chapter shall be known and cited as the "Dairy Environmental Control Act."

37-602. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The legislature recognizes the importance of protecting state natural resources including surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable and socially responsible dairy industry in the state. This chapter is intended to ensure that dairy waste systems are constructed, operated and maintained in a manner which protects the natural resources of the state.

(2) Further, the legislature recognizes that the dairy industry is potentially subject to various state and federal laws designed to protect state natural resources and that the Idaho department of agriculture is in the best position to administer and implement these various laws. It is therefore the intent of the legislature that the administration of this chapter by the department of agriculture fully meets the goals and requirements of the federal clean water act and state laws designed to further protect state waters.

(3) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature and upon effective coordination between the department of agriculture, the department of environmental quality and the Idaho dairymen's association to ensure compliance with this chapter and applicable state and federal laws, including the federal clean water act. Moreover, the legislature recognizes that it is important for the state to obtain an approved national pollutant discharge elimination system (NPDES) permit program from the environmental protection agency (EPA) under the clean water act. If such approval is obtained, the director of the department of environmental quality and the director of the department of agriculture shall, as appropriate, establish an agreement relating to the administration of any NPDES permit program that recognizes the expertise of the department of agriculture.

37-603. AUTHORITY AND DUTIES OF DIRECTOR. (1) Notwithstanding the provisions of chapters 1 and 36, title 39, Idaho Code, the director of the department of agriculture shall be solely responsible for protecting ground water within the boundaries of dairy farms regulated under this chapter and solely responsible for protecting surface water within the boundaries of dairy farms regulated under this chapter that are not under, or required to be under, an NPDES permit issued by the federal EPA or the department of environmental quality. The department is authorized to adopt rules to implement the provisions in this chapter.

(2) Except as provided in section 37-609, Idaho Code, nothing in this chapter shall affect the authority of the department of environmental quality regarding surface or ground water quality or violation of surface or ground water quality standards beyond the boundaries of dairy farms regulated under this chapter. In addition, nothing in this chapter shall affect

1 the authority of the department of environmental quality to implement an
2 NPDES permit program for dairy farms.

3 (3) The director shall have the authority to exercise any other author-
4 ities delegated by the director of the department of environmental quality
5 regarding the protection of ground water, surface water and other natural
6 resources associated with dairy farms, and this shall be the authority for
7 the director of the department of environmental quality to so delegate.

8 (4) The director of the department of environmental quality shall con-
9 sult with the director of the department of agriculture before certifying
10 discharges from dairy farms as provided under 33 U.S.C. section 1341.

11 37-604. DEFINITIONS. When used in this chapter:

12 (1) "Best management practice" means a practice, technique or measure
13 that is determined to be a reasonable precaution, a cost-effective and prac-
14 ticable means of preventing or reducing the discharge of pollutants from a
15 point source or a nonpoint source to a level compatible with environmental
16 goals, including water quality goals and standards.

17 (2) "Dairy farm" means land owned or operated by a dairy farm and is a
18 place or premises where one (1) or more milking cows, sheep or goats are kept,
19 and from which all or a portion of the milk produced thereon is delivered,
20 sold or offered for sale for human consumption.

21 (3) "Dairy waste" means manure and process wastewater that may also
22 contain bedding, spilled feed, compost, water or soil. It also includes
23 wastes not particularly associated with manure, such as milking center
24 or washing wastes, milk, feed leachate, or livestock carcasses or parts
25 thereof.

26 (4) "Dairy waste system" or "waste system" means the portion of a dairy
27 farm where dairy waste is stored, collected or treated. This may include
28 corrals, feeding areas, waste collection systems, waste conveyance systems,
29 waste storage ponds, waste treatment lagoons and evaporative ponds.

30 (5) "Department" means the Idaho department of agriculture.

31 (6) "Director" means the director of the Idaho department of agricul-
32 ture or his designee.

33 (7) "Modification" or "modified" means structural changes and alter-
34 ations to the dairy waste system that would require increased storage or con-
35 tainment capacity or such changes that would alter the function of the waste
36 system.

37 (8) "Noncompliance" means a practice or condition that: causes an
38 unauthorized discharge; or, if left uncorrected, will cause an unauthorized
39 discharge, or does not meet nutrient management standards and comply with a
40 nutrient management plan.

41 (9) "National pollutant discharge elimination system" (NPDES) means
42 the point source permitting program established pursuant to section 402 of
43 the federal clean water act.

44 (10) "Nutrient management plan" means a plan prepared in conformance
45 with the nutrient management standard or other equally protective standard
46 for managing the amount, placement, form and timing of the land application
47 of nutrients and soil amendments.

48 (11) "Person" means any individual, association, partnership, firm,
49 joint stock company, joint venture, trust, estate, political subdivision,

1 public or private corporation, state or federal governmental department,
 2 agency or instrumentality, or any legal entity that is recognized by law as
 3 the subject of rights and duties.

4 (12) "Process wastewater" means liquid containing dairy manure.

5 (13) "Unauthorized discharge" means a discharge of dairy waste to state
 6 surface waters or ground waters, or beyond a dairy farm's property bound-
 7 aries that does not meet the requirements of this chapter or ground water or
 8 surface water quality standards.

9 37-605. DESIGN AND CONSTRUCTION. Each new dairy farm and each modified
 10 dairy farm shall design and construct all new and modified waste systems in
 11 accordance with rules adopted by the director pursuant to this chapter. Such
 12 design and construction shall be considered a best management practice.

13 37-606. NUTRIENT MANAGEMENT PLAN. (1) All dairy farms shall have a nu-
 14 trient management plan approved by the department. The nutrient management
 15 plan shall cover the dairy farm site and other land owned and operated by the
 16 dairy farm owner or operator. Nutrient management plans submitted to the de-
 17 partment by the dairy farm shall include the names and addresses of each re-
 18 cipient of that dairy farm's livestock waste, the number of acres to which
 19 the livestock waste is applied and the amount of such livestock waste re-
 20 ceived by each recipient. The information provided in this subsection shall
 21 be available to the county in which the dairy farm, or the land upon which the
 22 livestock waste is applied, is located. If livestock waste is converted to
 23 compost before it leaves the dairy farm, only the first recipient of the com-
 24 post must be listed in the nutrient management plan as a recipient of live-
 25 stock waste from the dairy farm. Existing dairy farms shall submit a nutri-
 26 ent management plan to the department.

27 (2) Any new dairy farms or dairy farms that change owners or operators
 28 shall have an approved nutrient management plan on file with the department
 29 prior to the issuance of the milk permit for that dairy. The nutrient manage-
 30 ment plan shall be implemented upon approval of the plan by the department.

31 (3) The nutrient management plan, and all information generated by the
 32 dairy as a result of such plan, shall be deemed to be trade secrets, produc-
 33 tion records or other proprietary information, shall be kept confidential
 34 and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

35 37-607. INSPECTIONS. (1) The director or his designee is authorized to
 36 enter and inspect any dairy farm to determine that dairy waste has been man-
 37 aged to prevent an unauthorized discharge or contamination of surface and
 38 ground water, and to determine compliance with a nutrient management plan.
 39 The director shall have access to or copy any facility records deemed neces-
 40 sary to ensure compliance with this chapter and the federal clean water act.
 41 The director shall comply with the biosecurity protocol of the operation so
 42 long as the protocol does not inhibit reasonable access to:

43 (a) Enter and inspect at reasonable times the premises or land applica-
 44 tion site or sites of a dairy farm;

45 (b) Review, copy or review and copy at reasonable times any records that
 46 must be kept under conditions of this chapter;

1 (c) Sample or monitor at reasonable times substances or parameters di-
2 rectly related to compliance with an NPDES permit or this chapter.

3 (2) All inspections and investigations conducted under the authority
4 of this chapter shall be performed in conformity with section 17, article I
5 of the constitution of the state of Idaho. The state shall not, under the
6 authority granted by this chapter, conduct warrantless searches of private
7 property in the absence of either consent from the property owner or other
8 authorized person.

9 37-608. UNAUTHORIZED DISCHARGES -- COMPLIANCE SCHEDULES -- PENAL-
10 TIES. (1) No dairy farm shall cause an unauthorized discharge.

11 (2) Noncompliance with requirements for dairy waste systems, with nu-
12 trient management standards, and with nutrient management plans shall be
13 addressed through corrective actions and compliance schedules pursuant to
14 rules adopted by the director.

15 (3) For unauthorized discharges and noncompliance conditions, the di-
16 rector or his designee shall have the authority to assess a fine of up to ten
17 thousand dollars (\$10,000) per occurrence. Civil penalties collected under
18 this subsection shall be remitted to the county where the violation occurred
19 for deposit in the county current expense fund.

20 37-609. SAFE HARBOR. (1) Dairy farms and discharges operating in com-
21 pliance with this chapter shall not be subject to state enforcement action
22 due to violations of state water quality standards or state ground water
23 quality standards except in the event of imminent and substantial danger as
24 provided in chapter 1, title 39, Idaho Code.

25 (2) In any case in which the United States environmental protection
26 agency initiates an enforcement action regarding an alleged noncompliance
27 at a dairy farm, any pending administrative or civil enforcement action
28 initiated by the director regarding the same alleged noncompliance shall be
29 deemed void. If a compliance order addressing the alleged noncompliance has
30 already been issued by the director, that order shall remain in full force
31 and effect.

32 SECTION 2. That Chapter 7, Title 37, Idaho Code, be, and the same is
33 hereby repealed.

34 SECTION 3. That Chapter 8, Title 37, Idaho Code, be, and the same is
35 hereby repealed.

36 SECTION 4. That Chapter 10, Title 37, Idaho Code, be, and the same is
37 hereby repealed.